

effectively precluded from invoking the section 252 negotiation and arbitration procedures in order to obtain ... terms more favorable than those provided under" the Board's generic rates.

To summarize, the FCC will preempt any state law or regulation that on its face or in practical effect precludes telecommunications carriers from using the negotiation and arbitration procedures of the Act to obtain more favorable terms and conditions for interconnection. The Board's action is therefore inconsistent with FCC regulation and cannot be upheld as a valid exercise of state authority under Section 261.

CONCLUSION

Wherefore, for the foregoing reasons, this Court should reverse and vacate the holding of the District Court that the New Jersey Board of Public Utilities has authority under the Telecommunications Act of 1996 to substitute generic rates for rates in agreements reached pursuant to arbitration under 47 U.S.C. § 251 and 47 U.S.C. § 252, and provide any other relief that the Court deems appropriate.

Respectfully submitted,



Blossom A. Peretz, Esq.
Ratepayer Advocate

Dated: November 20, 2000

On the brief:

Heikki Leesment, Deputy Ratepayer Advocate
Christopher J. White, Asst. Deputy Ratepayer Advocate
Elana Shapochnikov, Asst. Deputy Ratepayer Advocate
Brian M. Wondrack, Legal Consultant

Docket No. 00-2000

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

AT&T Communications of New Jersey, Inc.
Plaintiff

State of New Jersey Division of the Ratepayer Advocate,
Plaintiff-Intervenor

v.

Bell Atlantic-New Jersey, Inc., and
The New Jersey Board of Public Utilities, an agency, and
Herbert H. Tate and Carmen J. Armenti, in their official
capacities as Commissioners of the Board of Public Utilities,
Defendants.

On Appeal from an Order of the
United States District Court, District of New Jersey

**CERTIFICATION OF
BAR MEMBERSHIP (3rd Cir. LAR 46.1)**

BLOSSOM A. PERETZ, of full age sworn upon her oath, certifies and says:

1. I am an attorney admitted to the practice of law to the Bars of the States of New Jersey and New York.
2. I am also, as of 1980, a member in good standing of the Bar of the Third Circuit Court of Appeals as required by 3rd Circuit Local Rule 46.1.
3. I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: November 20, 2000



BLOSSOM A. PERETZ, ESQ.
Ratepayer Advocate
of the State of New Jersey

EXHIBIT A



State of New Jersey

DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET, 11TH FLOOR
P.O. Box 46005
NEWARK, NJ 07101

CHRISTINE TODD WHITMAN
Governor

BLOSSOM A. PERETZ, ESQ.
Ratepayer Advocate
and Director

July 10, 2000

Via UPS Overnight Delivery

Marcia M. Waldron, Acting Clerk
Office of the Clerk
United States Court of Appeals
For the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

**Re: AT&T Comm. of NJ Inc., et al. v. Bell Atlantic-New Jersey, Inc., et al.
Docket No. 00-2000
D.C. No. 97-cv-05762**

Dear Ms. Waldron:

Pursuant to your letter dated June 30, 2000, enclosed is the following:

1. An original and one copy of the Form for Appearance of Counsel;
2. An original and one copy of the Civil Information Statement;
3. An original and one copy of the Concise Summary of the Case; and
4. An original and four copies of the Corporate Disclosure Statement and Statement of Financial Interest.

By copy of this letter we are serving all parties in the underlying matter via first class mail.

Thank you for your consideration and assistance in this regard.

Very truly yours,

Blossom A. Peretz, Esq.
Ratepayer Advocate

:dlc

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-2000
etc. CMC

AT&T Communications of New Jersey, Inc.;
State of New Jersey Division of the _____ vs. Bell Atlantic-New Jersey, Inc., et al.
Ratepayer Advocate

The Clerk will enter my appearance as Counsel of Record for (please list names of
all parties represented, using additional sheet(s) if needed):

State of New Jersey Division of the Ratepayer Advocate

who IN THIS COURT is (please check only one):

<u> </u> Petitioner(s)	Respondent(s) <u> </u>
<u> X </u> Appellant(s)	Appellee(s) <u> </u>
<u> </u> Intervenor(s)	Amicus Curiae <u> </u>

SIGNATURE OF COUNSEL:

Blossom A. Peretz

(Type or Print) Name Blossom A. Peretz, Esq.

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Firm NJ Division of the Ratepayer Advocate

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Fax 973 624-1047

Email Address bperetz@rpa.state.nj.us

(Optional)

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE.
THAT ATTORNEY WILL BE THE ONLY ONE NOTIFIED OF THE
COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO
DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE
ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE
COURT OF APPEALS FOR THE THIRD CIRCUIT OR WHO HAVE
SUBMITTED A PROPERLY COMPLETED APPLICATION FOR
ADMISSION TO THIS COURT'S BAR MAY FILE AN APPEARANCE -
FORM. (BAR ADMISSION IS WAIVED FOR FEDERAL ATTORNEYS.)

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CIVIL INFORMATION STATEMENT

00-2002

Please type

Attach additional pages if necessary

COUNSEL FOR APPELLANT: This statement is due to be filed with the Clerk of the Court of Appeals not later than 10 days from the filing of the notice of appeal. COUNSEL FOR APPELLEE: If any information in appellant's statement is incorrect, counsel for appellee is directed to file a copy of this statement not later than 10 days after service.

SHORT CAPTION WITH IDENTITY OF APPELLANT

APPEAL FROM DISTRICT COURT

AT&T Communications of New Jersey, Inc.;
State of New Jersey Division of the Ratepayer
Advocate,

Appellant

v. Bell Atlantic-New Jersey, Inc., et al.

District: USDC District of New Jersey

D.C. Docket No.: 97-5726 (KSH)

Date filed in D.C.: 11/24/97

Date NOA filed: 6/30/00

NAME AND ADDRESS OF COUNSEL ON APPEAL

Name of Counsel

Address

Telephone No. (incl. FAX #,
if any)

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*See attached for additional counsel

***LIST ONLY THE NAMES OF PARTIES WHO WILL OPPOSE YOU ON APPEAL,
TOGETHER WITH THE NAMES AND ADDRESSES OF THEIR ATTORNEYS**

Is this a Cross-Appeal? Yes [] No [x]

Was there a previous appeal in case? Yes [] No [x]

If yes, Short Title: _____

Docket No.: _____

Citation, if reported: _____

See p. 2.

To your knowledge, is there any case now pending or about to be brought before this Court or any other court or administrative agency which

{A} Arises from substantially the same case or controversy as this appeal? ☒ Yes
☐ No

{B} Involves an issue that is substantially the same, similar, or related to an issue in this appeal?
☒ Yes ☐ No

If yes, state whether ~~xx~~ "A" or ~~xx~~ "B" or both, and provide:

Case Name: Citation: Court or Agency Federal Communications Commission
I/M/O The Division of the Ratepayer Advocate Petition for Declaratory Ruling
Seeking Preemption of Certain Legal Requirements Imposed on Telecommunications Carriers...
Docket No.:

00-49

NATURE OF SUIT
(Check as many as apply)

1. FEDERAL STATUTES

☐ ANTITRUST
☐ BANKRUPTCY
☐ BANKS & BANKING
☐ CIVIL RIGHTS
☐ COMMERCE, ROUTES,
AND TARIFFS
☐ COMMODITIES
☒ COMMUNICATIONS
CONSUMER PROTECTION
☐ COPYRIGHT ☐ PATENT
OR ☐ TRADEMARK
☐ ELECTION
☐ ENERGY
☐ ENVIRONMENTAL
☐ FREEDOM OF
INFORMATION
☐ IMMIGRATION
☐ LABOR
☐ OSHA
☐ SECURITIES
☐ SOCIAL SECURITY
☐ TAX
☐ EQUAL ACCESS TO
JUSTICE

2. TORTS

☐ ADMIRALTY
☐ ASSAULT/DEFAMATION
☐ PRODUCT LIABILITY/
WARRANTY
☐ DIVERSITY
☐ OTHER (specify):

4. PRISONER PETITIONS

☐ CIVIL RIGHTS
☐ HABEAS CORPUS (2254)
☐ MANDAMUS AND OTHER
☐ PAROLE
☐ VACATE SENTENCE (2255)

5. OTHER

3. CONTRACTS

☐ ADMIRALTY/MARITIME
☐ ARBITRATION
☐ COMMERCIAL
☐ EMPLOYMENT
☐ INSURANCE
☐ NEGOTIABLE
DISBURSEMENTS
☐ DIVERSITY
☐ OTHER (specify):

☐ FORFEITURE/PENALTY
☐ REAL PROPERTY
☐ TREATY (specify):

☐ DIVERSITY
☐ OTHER (specify):

☒ OTHER (specify): 47 U.S.C. 252 (e) (6)

N.B. ALL CASES EXCEPT THOSE IN CATEGORY 4, ORIGINAL PROCEEDINGS (e.g., mandamus/prohibition), AND PRO SE CASES ARE SUBJECT TO REFERRAL TO THE COURT'S MEDIATION PROGRAM.

This is to certify that this civil appeal information statement was ^{electronically} mailed to the Clerk of the U.S. Court of Appeals for Third Circuit and a copy hereof served to each party or their counsel of record ^{electronically} on this 10th day of July, 2000.

REV. 02/28/00


(Signature of Counsel)

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CONCISE SUMMARY OF THE CASE

00-2000

Pursuant to 3rd Cir. LAR 33.3, counsel are required to file a concise summary of the case within ten (10) days of the date of docketing of the Notice of Appeal to facilitate a determination whether an appeal may be subject to mediation.

(Total statement is limited to no more than 2 pages, single-spaced. Counsel may utilize this form or attach a 2 page statement encompassing the information required by this form.)

SHORT CAPTION: AT&T Communications of New Jersey, Inc., et al. v. Bell Atlantic-New Jersey,
DISTRICT COURT or AGENCY and DOCKET NUMBER: USDC of NJ, 97-5726 (KSH) et al.
NAME OF JUDGE: Hon. Katharine S. Hayden

Specify who is suing whom for what and the subject of this appeal, i.e., identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the district court or agency from which this appeal is taken:

1. This is an appeal from the decision of the District Court under Section 252(e)(6) of the Federal Telecommunications Act of 1996.
2. The Division of the Ratepayer Advocate, Plaintiff-Intervenor below.
3. Reinstatement of arbitrated rates and declaratory and injunctive relief pursuant to 28 U.S.C. ~~2201~~ 2201, 2202, and 47 U.S.C. 252 (e)(6).
4. Order and Opinion issued June 6, 2000.

Identify and ATTACH to this statement a copy of each order, judgment, decision or opinion which is involved in this appeal. If the order(s) or opinion(s) being appealed adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision shall also be attached.

Opinion and Order issued on June 6, 2000 by the District Court for the District of NJ

CONCISE SUMMARY OF THE CASE (cont.)

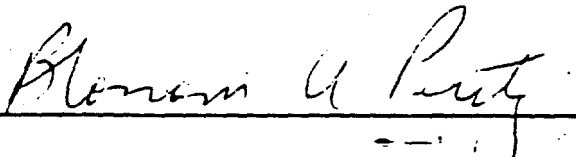
Provide a short statement of the factual and procedural background which you consider important to this appeal.

See Statement of Material Facts filed with the Ratepayer Advocate's Motion for Summary Judgment.

Identify the issues to be raised on appeal:

See attached sheet.

This is to certify that this Concise Summary of the Case was ^{received}mailed to the Clerk of the U.S. Court of Appeals for the Third Circuit and a copy hereof served to each party or their counsel of record ^{by mail} on this 10th day of July, 2000.


(Signature of Counsel)

ISSUES TO BE RAISED ON APPEAL

1. whether the New Jersey Board of Public Utilities ("Board's") action below is *Ultra Vires* and it lacks authority under Sections 251 and 252 of the Act to substitute Generic Proceeding provisions for arbitrated provisions;
2. whether the Supremacy Clause of the United States Constitution preempts the Board action in substituting Generic Proceeding provisions for arbitrated provisions;
3. whether Section 253 of the Act and the Federal Communications Commission ("FCC's") *Memorandum Opinion and Order* and the *FCC's Arkansas Preemption Order* preempts the Board's action in substituting Generic Proceeding provisions for arbitrated provisions;
4. whether, as a matter of law, the AT&T Communications of New Jersey, Inc. (AT&T) and Bell Atlantic - New Jersey, Inc. (BA-NJ)(AT&T/BA-NJ) interconnection agreement with arbitrated provisions meets the requirements of Sections 251 and 252 and the regulations implementing these sections or alternatively, whether the interconnection agreement meets the standards set forth in Section 252(d). If it does, the AT&T and BA-NJ interconnection agreement with arbitrated provisions should be re-instated;
5. whether BA-NJ has waived any rights to challenge the Arbitration Award due to its failure to assert objections during the arbitration proceeding or otherwise reserve its rights in said proceeding that the Arbitrated Award does not meet the requirements of Section 252(e)(2)(B); and.
6. Under the Federal Telecommunications Act of 1996 and the FCC's rules, two-way trunking is required.

STATUTORY ADDENDUM

47 U.S.C. § 251

§ 251. Interconnection

(a) General duty of telecommunications carriers. Each telecommunications carrier has the duty--

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

(b) Obligations of all local exchange carriers. Each local exchange carrier has the following duties:

(1) Resale. The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability. The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity. The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way. The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

(5) Reciprocal compensation. The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers. In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate. The duty to negotiate in good faith in accordance with section 252 [47 USCS § 252] the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection. The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange

service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

(3) Unbundled access. The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale. The duty--

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes. The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) Collocation. The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation.

(1) In general. Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) Access standards. In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether--

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) Preservation of State access regulations. In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) Numbering administration.

(1) Commission authority and jurisdiction. The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs. The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) Universal emergency telephone number. The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on the date of enactment of the Wireless Communications and Public Safety Act of 1999.

(f) Exemptions, suspensions, and modifications.

(1) Exemption for certain rural telephone companies.

(A) Exemption. Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b) (7) and (c) (1) (D) thereof).

(B) State termination of exemption and implementation schedule. The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b) (7) and (c) (1) (D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption. The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996.

(2) Suspensions and modifications for rural carriers. A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements. On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) Definition of incumbent local exchange carrier.

(1) Definition. For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that--

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents. The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) Savings provision. Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.

47 USC § 252

§ 252. Procedures for negotiation, arbitration, and approval of agreements

(a) Agreements arrived at through negotiation.

(1) Voluntary negotiations. Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation. Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration.

(1) Arbitration. During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner.

(A) A party that petitions a State commission under paragraph 1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning--

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond. A non-petitioning party to a negotiation under this section may respond to the other party's

petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by State commission.

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate. The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for arbitration. In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing standards.

(1) Interconnection and network element charges. Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section --

(A) shall be--

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the

interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic.

(A) In general. For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction. This paragraph shall not be construed--

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services. For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) Approval by State commission.

(1) Approval required. Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection. The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that--

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and

necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

(3) Preservation of authority. Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) Schedule for decision. If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

(5) Commission to act if State will not act. If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) Review of State commission actions. In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section.

(f) Statements of generally available terms.

(1) In general. A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.

(2) State commission review. A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253,

nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) Schedule for review. The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission--

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review. Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) Duty to negotiate not affected. The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251.

(g) Consolidation of State proceedings. Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this Act.

(h) Filing required. A State commission shall make a copy of each agreement approved under subsection (e) and each statement approved under subsection (f) available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

(i) Availability to other telecommunications carriers. A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

(j) Definition of incumbent local exchange carrier. For purposes of this section, the term "incumbent local exchange carrier" has the meaning provided in section 251(h).

47 U.S.C. § 251

§ 261. Effect on other requirements

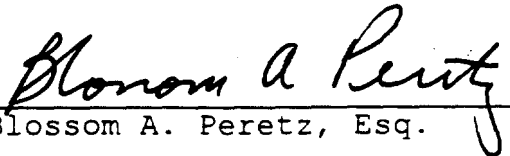
(a) Commission regulations. Nothing in this part shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996 in fulfilling the requirements of this part, to the extent that such regulations are not inconsistent with the provisions of this part.

(b) Existing State regulations. Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

(c) Additional State requirements. Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

CERTIFICATE OF COMPLIANCE

Pursuant to the Rules of Appellate Procedure, Rule 32(a)(7)(C), the undersigned certifies that this brief contains 10,263 words. This certificate was prepared in reliance on the word count of the word-processing system used to prepare this brief.


Blossom A. Peretz, Esq.

Dated: November 20, 2000

RECEIVED

Docket No. 00-2000

JUN 29 2001

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

ECC MAIL ROOM

AT&T Communications of New Jersey, Inc.,
Plaintiff

State of New Jersey Division of the Ratepayer Advocate,
Plaintiff-Intervenor

v.

Bell Atlantic-New Jersey, Inc., and
The New Jersey Board of Public Utilities, an agency, and
Herbert H. Tate and Carmen J. Armenti, in their official
capacities as Commissioners of the Board of Public Utilities,
Defendants.

On Appeal from an Order of the
United States District Court, District of New Jersey

**APPENDIX OF APPELLANT
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

Vol. 1, pp. 1a-49a

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November 20, 2000



State of New Jersey

DIVISION OF THE RATEPAYER ADVOCATE
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CHRISTINE TODD WHITMAN
Governor

BLOSSOM A. PERETZ, ESQ.
Ratepayer Advocate
and Director

June 30, 2000

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JUN 30 2000

AT 8:30
WILLIAM T. WALSH, CLERK

Via Hand Delivery

William T. Walsh, Clerk
United States District Court
Martin Luther King, Jr. Federal
Building and US Courthouse
50 Walnut Street
Newark, NJ 07101

Re: AT&T Communications of New Jersey, Inc. v. Bell Atlantic
New Jersey, Inc., et al.
Civil Action No. 97-5726 (KSH)

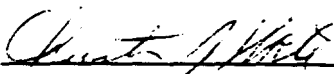
Dear Mr. Walsh:

Enclosed for filing on behalf of the New Jersey Division of the Ratepayer Advocate is an original and fourteen (14) copies of a Notice of Appeal with reference to the above-captioned matter, along with check #4515822 in the amount of \$105.00 in payment of the required filing fee.

Please be advised that, pursuant to LAR 3.1 of the Rules of the United States District Court of Appeals for the Third Circuit, a copy of the enclosed Notice of Appeal has been provided to the Honorable Katharine S. Hayden, USDJ, via first class mail under separate cover.

We are enclosing one additional copy of the materials transmitted. Please stamp and date the copy as filed, and return it to our messenger. Thank you for your consideration and assistance.

Very truly yours,
Blossom A. Peretz, Director
DIVISION OF THE RATEPAYER ADVOCATE

By: 
Christopher White
Assistant Deputy Ratepayer Advocate

CW:dlc